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Economic and environmental questions

Note by the Secretary-General

1. At its 3886th meeting, on 28 May 1998, the Security Council adopted resolution 1170 (1998)[1] in connection with the item entitled "The situation in Africa".

2. In paragraph 2 of the resolution, the Security Council:

> "2. *Stresses* that the challenges in Africa demand a comprehensive response and, in this context, *expresses* the hope that the General Assembly, the Economic and Social Council, other relevant bodies of the United Nations, regional and subregional organizations, international financial institutions and other relevant organizations, as well as Member States will consider the report and its recommendations and take action as they deem appropriate within their respective areas of competence."

3. The above-mentioned report of the Secretary-General (A/52/871-S/1998/318), entitled "The causes of conflict and the promotion of durable peace and sustainable development in Africa", will be made available to the Economic and Social Council for its consideration.

Notes

[1] Not reproduced in the present document; for the full text, see document S/RES/1170 (1998) of 28 May 1998.

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Letter dated 13 July 1998 from the Permanent Representative of Vanuatu to the United Nations addressed to the President of the Economic and Social Council

I have the honour to transmit herewith the text of a letter dated 8 July 1998 addressed to you by His Excellency the Honourable Donald Kalpokas, Prime Minister and Minister for Foreign Affairs of the Republic of Vanuatu, in connection with the recommendation by the Committee for Development Planning regarding the graduation of the Republic of Vanuatu from the list of least developed countries.

I should be grateful if you would bring the content of this letter to the attention of the members of the Economic and Social Council. I should also be grateful if you would have the text of this letter and of its annex circulated as a document of the Economic and Social Council at its substantive session, under agenda item 13.

(Signed) Jean **Ravou-Akii**
Ambassador
Permanent Representative

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Annex

Letter dated 8 July 1998 from the Prime Minister of Vanuatu to the President of the Economic and Social Council

Proposed graduation of Vanuatu from the list of the least developed countries

Further to my predecessor's letter of 27 August 1997 to the Secretary-General of the United Nations and to the deliberations of the General Assembly at its fifty-second session regarding the above issue, may I reiterate my Government's concern over the proposal by the Committee on Development Planning, following its triennial review at its 1997 session, to have Vanuatu graduate from the list of the least developed countries?

My Government once again urges the General Assembly and the Economic and Social Council to defer the review by the Committee of the status of Vanuatu as one of the least developed countries until the year 2000. The following reasons are advanced in support of our position on this matter:

(a) We still have serious doubts about the quality of the statistics used for the exercise;

(b) We have had no technical input into the computation exercise; neither were we invited to make observations on the qualitative judgements, which had to be made in the face of inadequacies with regard to available statistics and the set of indicators employed;

(c) The Committee on Development Planning itself underlined the importance of undertaking further work on the criteria it uses to decide on the graduation of countries from the list. In this context, it also recommended that further work be carried out on a vulnerability index for possible use in the identification of the least developed countries. In the light of these developments, the Government still maintains that it would be inappropriate to ask the Economic and Social Council to finalize its views on the graduation of any further countries until the Committee has reviewed the criteria it uses and, in accordance with the request of the General Assembly, included a vulnerability index among them;

(d) As part of our nationwide Comprehensive Reform Programme, which we are currently implementing, we are focusing on domestic capacity-strengthening in all sectors, *inter alia*, within the Statistics Office. This effort will result in improved sets of statistical data on such matters as GDP, GNP and sectoral shares, life expectancy, mortality, literacy, energy consumption, primary and secondary school enrolment, sectoral employment, export concentration, and caloric intake, which are needed in order for a fair assessment to be made of our position as one of the least developed countries.

Given expected further improvement and refinement in these statistics and our wish to participate fully and constructively with the Committee on Development Planning and other relevant authorities, we believe, as mentioned above, that an assessment of Vanuatu's status should be deferred and undertaken in the year 2000 when confidence in the quality of the exercise by all parties, including ourselves, is likely to be at a higher level.

(Signed) Donald **Kalpokas**
Prime Minister

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Implementation of General Assembly resolutions 50/227 and 52/12 B

Economic and Social Council session on integrated and coordinated implementation and follow-up of the major United Nations conferences and summits

Summary by the President of the Council

Introduction

1. This session of the Economic and Social Council was of historic significance. Never in the history of the Council have so many key actors come together to have a dialogue, and to exchange views, on subject matter that drives so much of the work of the United Nations in the economic, social and related fields. Chairs of the functional commissions, of the Administrative Committee on Coordination (ACC) task forces and standing committees, and of the executive boards of the funds and programmes as well as the executive heads of the funds and programmes and of the regional commissions, and representatives of civil society – all have contributed in a constructive, frank and open way to the success of this session. The session has provided a wealth of material from which the Council can draw and upon which it can build when it meets again on this subject at its substantive session of 1998 in July. Together with the report of the Secretary-General, which not only is comprehensive in scope but also contains many new ideas and proposals, the Council is now well positioned to tackle the all-important subject of conference follow-up and implementation.

2. The Charter of the United Nations gives the Council the all-important role of providing coordination in general and of giving guidance and oversight to its subsidiary bodies in particular. For a long time, the Council has fallen short in performing this essential task and only in recent years has it begun to reassert itself in carrying out this role.

3. This special session of the Council has given further evidence that the Council is becoming increasingly effective in carrying out its key role in ensuring that the follow-up to global conferences is well integrated, coordinated and effective. In no small way, this session is carrying forward the reform of the United Nations in the economic, social and related fields as set out in General Assembly resolutions 50/227 and 52/12 B.

4. The Council sits at the apex of the configuration of United Nations activities in the economic, social and related fields and as such has a crucial role to play from both a policy coordination standpoint and a management forum function. At the same time, integrating conference follow-up is a daunting task, which requires time, and in-depth examination, and the Council needs to reflect on how best to achieve it. Furthermore, the task at hand is now shifting towards implementation and monitoring of results.

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5. The breadth and depth of this task were clearly brought out in the deliberations and can be captured in the following six broad areas, namely (a) cross-cutting issues; (b) coordination and management role of the Council, in particular *vis-à-vis* its functional commissions and the executive boards of the funds and programmes; (c) inter-agency coordination; (d) country-level follow-up; (e) regional-level follow-up; and (f) monitoring. Under each of these broad areas, a wealth of detailed suggestions, proposals and recommendations have been made and these are reflected below:

I. Cross-cutting issues

- Poverty eradication and improving the living conditions of people everywhere should be the overriding objective of the Council's efforts to ensure an integrated and coordinated follow-up to conferences.
- In its role of overseeing the coordinated follow-up to conferences and summits, the Council will have to strike a proper balance between the specificity of each of the conferences and summits, which have their own specific and highly committed constituencies, and the need to address cross-cutting issues.
- It is important to maintain a balance between cross-sectoral and sectoral issues in conference follow-up. In addition, it is important that, in the coordinated follow-up, no single issue receive special attention over others. Selectivity in implementing commitments should be avoided.

A. Resources

- In focusing on cross-cutting issues, the Council has a special advantage over its functional commissions. The Council could use the various goals and targets as its organizing principle for monitoring progress in conference implementation.
- Linking the goals and targets to the issues of financing and assistance in achieving the commitments made at the conferences would be especially important, particularly in light of the decline in official development assistance (ODA).
- The decline in resources for conference implementation needs to be addressed by the Council, as well as the effective use and results of resource utilization, based, *inter alia*, on reports by funds and programmes.

B. Civil society

- Involvement of civil society in an effective way in the intergovernmental conference follow-up process is essential in view of the significant role that members of civil society have played in the conferences themselves as well as in their follow-up and implementation, particularly at the country level. The private sector should be involved as well, in calling upon civil society to take social concerns into account as regards the activities of its members.
- The Council should take the lead in promoting greater involvement of civil society in the work and activities of the United Nations. Panels at the Council could systematically include one representative of civil society and ways could be explored for non-governmental organizations to bring certain issues to the attention of the Council.
- Strengthening and adequately funding of the United Nations Non-Governmental Liaison Service (NGLS) could also be considered.

II. Coordination and management role of the Council

- The Council, in its management function, should provide more effective guidance to its functional commissions and particularly to the executive boards of the funds and programmes that are responsible, together with specialized agencies and all other partners, for facilitating conference implementation at the country level.

A. Functional commissions

- As a matter of urgency, the Council needs to start a process, through a dialogue with all bureaux of functional commissions, of structuring and coordinating the preparations for forthcoming five-year reviews of conferences and of ensuring that the knowledge and expertise available in the whole system will be fully used in that process.

- Substantive interaction among commissions and with the Council needs to be further enhanced. The Council needs to consider commissions' outcomes in an integrated manner, and to identify conflicting approaches to providing guidance. It should also make greater use of substantive outcomes of its commissions in its own work.
- New developments have been occurring since the conferences took place: it would be useful for functional commissions to have an agenda item on emerging issues.
- Commissions have consistently improved their working methods, but there is scope for still further progress, in particular by refocusing general debates and expanding the interaction with civil society and experts.
- To ensure greater follow-up to commissions' outcomes, the Council could report every year on the principal outcomes of the functional commissions as regards follow-up to conferences, for transmission to funds, programmes and agencies, and broader dissemination.
- The Council should find ways of ensuring early availability of functional commissions' outcomes, so that they can be used in other forums. The Secretariat should clarify the legal status of these outcomes before the Council endorses them.
- The Secretariat should be actively involved in ensuring the coordination of functional commissions. This includes circulation of documentation and outcomes and a more proactive assistance in coordination.

B. Bureaux of the functional commissions

- Transmitting outputs and reports is not sufficient to ensure coordination. Commissions and their bureaux need to develop a culture of using other functional commissions' outcomes in their work. Personal interaction among bureau members – including having the chair of one functional commission attend the session of another commission – is essential.
- Greater interaction between the Bureau of the Council and the bureaux of functional commissions is essential. The Bureau of the Council could meet with chairpersons of functional commissions, in January or in May, to coordinate the work of the upcoming sessions and their preparations.
- Meetings between incoming and outgoing bureaux of functional commissions are important for continuity of work. For improved sessions' preparation, more functional commissions could consider electing their bureaux at the end of their session.
- Bureaux of functional commissions need to keep all member States fully informed on sessions' preparations. A mixed composition of bureaux balanced between capital experts and members of permanent missions could help maintain the commissions' expertise while enabling greater interaction with other bureaux.

C. Executive boards of the funds and programmes

- Linking the normative and operational parts of the work of the United Nations system remains a key challenge for conference implementation. Guidance by the Council has to become more focused and relevant to the activities of the funds and programmes, in particular in the context of the triennial policy review and agreed conclusions on conference follow-up. Enhanced interaction with executive boards of funds and programmes and with country teams could assist in this regard.
- The respective guidance roles of the Council and of the executive boards of funds and programmes should be further clarified. The Council could be the forum for high-level dialogue on broad, cross-cutting development themes, and could give guidance to the executive boards on the follow-up to global conferences. The Council should also address cross-cutting policy issues relating to operational activities as well as to resources.
- The executive boards should concentrate on management and funding issues, with the focus mainly on downstream coordination, thereby having a role in contributing to the implementation of outcomes of the conferences at the country level.
- Reports to the Council by the executive boards should be more analytical in order to permit the Council to fulfil its coordination role. Less emphasis should be placed on process in these reports, with more space given to factual analysis.
- The executive boards should invite the Council to transmit recommendations back to the boards on ways to better interact with the Council.

III. Inter-agency coordination

- The coordinating role of the Council and the active leadership of ACC are of utmost importance to inter-agency coordination in view of the fact that the conferences have provided the programmatic basis for such coordination in terms of joint action, analysis and implementation.
- The follow-up to global conferences often requires collaboration or joint programming, but mechanisms for funding such initiatives are not always available. Therefore, the Council should encourage the mobilization of resources for coordination purposes and joint activities. Special-purpose arrangements and round tables could be needed for funding specific programmes or themes.

A. ACC task forces

- The ACC task forces have been particularly important in translating the conference goals to the field level and their results should be more fully disseminated.
- The resident coordinator system needs to use the task forces' outputs, in particular in preparing programming frameworks, and to disseminate them to Governments and other partners. Use by regional commissions is also important. Feedback on the use of these outputs in specific country situations is important in order to adapt, update or supplement them.
- Guidance by the Council is required to ensure that effective successor arrangements for the task forces are in place. The ACC standing machinery, and the Consultative Committee on Programme and Operational Questions (CCPOQ) in particular, is taking over from these task forces and is carrying forward their results.
- Follow-up to the work of the task forces should also include the use of networks of United Nations system organizations. Such networks make use of tasks managers, enable Headquarters and country coordination, and use information technology and liaise with ACC.

B. ACC standing committees

- ACC standing committees should pursue and enhance their efforts to support policy development based on conference outcomes and to develop guidance for country-level staff. They should also address further the issue of resource mobilization.
- Regular interaction between the inter-agency committees on women and gender equality, and on sustainable development, and the CCPOQ is important. Overall, it is considered that strengthening the system-wide gender perspective remains an item of unfinished business of coordination.
- Communication and interaction should be enhanced between the two executive committees (the Executive Committee for Economic and Social Affairs and the United Nations Development Group (UNDG)), and between them and ACC standing bodies, in particular CCPOQ and the Inter-agency Committee on Women and Gender Equality (IACWGE), in order to link the broader system with the executive committees' work.

C. ACC and the Council

- The interaction between the Council and ACC requires further improvement and ACC's activities should become more transparent and there should be a more intensive interaction between ACC and its subsidiary machinery and the Council. Regular arrangements to facilitate interaction between the Secretariat and Member States on the activities of ACC could be established.

D. Specialized agencies

- The Council needs to strengthen its interaction with the specialized agencies, and to enhance their participation in the sessions of the Council. As agencies have their own governing structures and mandate, the Council should enhance its interaction with the specialized agencies' governing bodies as well.
- The establishment of institutional ties between funds and programmes and specialized agencies, and between them and the Council, represents a major issue.

IV. Country-level follow-up

- Field-level implementation is ultimately the most important issue. National Governments have a key role in implementing conferences at the country level, and the United Nations system has an important role as facilitator. Besides lack of financial resources, coordination of national conference follow-up remains a problem in many countries. A major issue at the field level for the follow-up to global conferences is the availability of national capacities. Capacity-building initiatives should be promoted.
- The extent to which national-level implementation has been successful could be highlighted through having reports by the Secretariat on the various national experiences on progress in conference follow-up transmitted to the Council for its consideration.
- The resident coordinators play a crucial role in integrating the United Nations system's action to support national conference implementation. The follow-up of major United Nations conferences should be part of their mandate. The resident coordinator system should foster a broad dialogue and support the involvement of a wide range of parties in the follow-up to global conferences, including Governments, civil society and other donors. A joint situation analysis of where a country stands on conference follow-up may be carried out together with the Government. The resident coordinator system also has a role in promoting initiatives to build national capacity for conference implementation.
- The role of the United Nations Development Assistance Framework (UNDAF) in the follow-up to global conferences has been confirmed. The involvement of the specialized agencies in the UNDAF process, within the resident coordinator system, should be enhanced in order to ensure better country-level coordination.
- Outputs of ACC task forces and ACC's standardized guidance are useful tools in enhancing the efforts already undertaken by the United Nations country teams for conference implementation. Directives for gender-mainstreaming need to be translated into practical guidelines for field staff.
- The annual reports of the resident coordinators should be used as a monitoring tool and to disseminate examples of best practices, while bearing in mind that the variety of country experiences should be reflected therein.
- Training of country teams on follow-up to global conferences should be encouraged through a wider use of the United Nations Staff College.
- Further identification of conference cross-cutting themes, and corresponding indicators, could also help national action. It would be useful to issue a report highlighting the main commitments of conferences as well as a few best practices for implementation. National handbooks on national implementation of global agendas could also be developed.
- The partnership and cooperation between the United Nations system and the Bretton Woods institutions need to be further enhanced in conference follow-up at country level, in close consultation with the Government and with relevant-other development actors. The recently decided participation of the World Bank in two UNDAF exercises, where the relation between UNDAF and country assistance strategies (CASs) will be explored, should be further encouraged.
- The implementation of conference outcomes in countries in a post-conflict situation needs to be examined. The Council could pay particular attention to implementation in countries as they move from a crisis situation to rehabilitation and long-term development.

V. Regional-level follow-up

- The regional and subregional dimensions of the follow-up to conferences require further expansion and improvement as most attention has thus far ben paid to global and country perspectives.
- The Council has a role to play in stimulating follow-up by the regional commissions, and in ensuring that the regional commissions use the functional commissions' work and address all conferences. This requires greater involvement of the regional commissions in the work of the Council on global conferences.
- Mechanisms are needed for making the results of the regional-level deliberations better known to the Council. In this regard, the Chairman of the group of regional commissions could address the Council annually.

- The activities of the regional commissions in the follow-up to conferences should be carried out on a more systematic basis. The regional commissions' interaction with other parts of the United Nations system needs to be clarified, particularly with regard to the funds and programmes.

VI. Monitoring

- In order to effectively monitor progress in the implementation of conferences at the country level, there is an urgent need for the multilateral system to develop a coherent set of basic indicators, as well as a need to strengthen the capacity of the United Nations system and of countries to collect and analyse statistics. The United Nations, the Bretton Woods institutions and the Organisation for Economic Cooperation and Development/Development Assistance Committee (OECD/DAC) are urged to develop and apply common indicators to the maximum extent possible.
- The Council, possibly at a future meeting of its coordination segment, could review ongoing work in the area of statistics and indicators, in order to ensure coherence and to stimulate further advances in the area of social indicators in particular.

Conclusion

6. In conclusion, it would appear that a number of challenges have to be confronted in order to ensure not only an effective follow-up to global conferences but also, and in particular, their implementation at the country level. Five challenges can be identified:

(a) Ensuring horizontal integration;

(b) Financing for the conference action plans as well as for horizontal cross-cutting follow-up efforts;

(c) Need to address the insufficiency of relevant statistical data;

(d) Need for more involvement of civil society;

(e) Mainstreaming of gender and incorporation of human rights as cross-cutting themes in the follow-up process.

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Summary conclusions by Ambassador F. Paolo Fulci, Permanent Representative of Italy to the United Nations and Vice-President of the Economic and Social Council, at the special high-level meeting of the Council with the Bretton Woods institutions (New York, 18 April 1998)

1. Before trying to summarize the many innovative ideas that have emerged from this meeting, let me repeat how delighted we at the Economic and Social Council are that so many ministers and high-level officers participated in this meeting.

2. Its success is testimony to the tenacious efforts of those who have worked for months to make it possible – first and foremost, the Secretary-General, Mr. Kofi Annan, the wizard of peace, as he was called by an Italian newspaper, whose invitation attracted so many distinguished guests.

3. Next, the President of the Council, Ambassador Juan Somavia, who though unable to be with us today, conceived and followed every step in the preparations for this important encounter. May I also express my most sincere gratitude to the other members of the Bureau: Ambassador Anwarul Chowdhury of Bangladesh, Ambassador Roble Olhaye of Djibouti and Ambassador Alyaksandr Sychou of Belarus, as well as Mr. Nitin Desai, Under-Secretary-General for Economic and Social Affairs. I would like also to especially thank the members of the Council secretariat, the interpreters and support staff for making this meeting possible. They deserve commendation for their hard work on this project.

4. One theme running through today's dialogue has been the recognition that globalization has changed the world and that the world must respond. Within this broad framework, our discussions this morning have been driven to a large extent by the repercussions of the so-called Asian crisis. I say "so-called" because it is agreed that we live in an increasingly integrated world and that turmoil anywhere poses risks to all countries around the globe. Nobody, but nobody, can ensure his or her safety from its spillover effects. There is universal recognition that global financial integration is not an option – it is a historical shift. Global financial integration offers great opportunities but also great challenges; it offers benefits but it also poses great risks.

5. The Asian crisis has resulted in great attention being given to the sharing of risks and benefits in times of financial turmoil. The question of financial burden-sharing in times of crisis is a complicated and technical issue which will have to be addressed in other forums. However, our discussions have also highlighted the need for a sharing of benefits and risks over the longer term. Several speakers have reminded us of the contribution – that is to say, the benefits – of global financial integration to Asia's overall economic success and to the reduction in poverty over the past few decades; but

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there are also long-term risks – the risk of marginalization, the risk that some countries or individuals may be left behind. There must be a sharing of these long-term benefits and risks. Global financial integration should be to the benefit of all countries and all peoples; and we must all work together to reduce the risks of marginalization. I believe that the discussions this morning have demonstrated, encouragingly, a growing consensus on the means to maximize such benefits so as to reduce these potential risks.

6. In the short term, there continue to be different points of view about the reasons for the recent crisis and the most appropriate ways of responding to it. Nevertheless, appreciation was expressed for the prompt response to the crisis by the international community, led by the International Monetary Fund (IMF) and the World Bank. At the same time, there was universal recognition that the initial financial crisis has developed wide-ranging economic and social dimensions. There was widespread and deep concern about the adverse consequences of financial crises for vulnerable groups and the profound consequences for poverty. There was unanimity that special efforts need to be made to protect the poor and other vulnerable groups in times of crisis. The alleviation of poverty must remain our ultimate objective, both in the long run and over the short term.

7. Our discussions this morning have demonstrated that all of us – international institutions and national Governments – still have much to learn about responding to the forces of global financial integration. While many questions remain, we agree that there is a need to strengthen the global architecture, that prevention is better than cure, and that actions are required at both the international and the national levels. The wide-ranging nature of the fallout from the crisis calls for a collective response involving all our institutions to varying degrees. A number of interesting and innovative ideas were presented, demonstrating that this meeting has provided an important opportunity to exchange views on the types of action that need to be taken by us, individually and collectively.

8. There seems to be universal agreement that more information, greater transparency and improved monitoring are indispensable in reducing the possibility of financial crises. I believe that this meeting has demonstrated, equally, the need to develop the flows of information and transparency between our institutions. There were many references to the need for policy coherence and partnership at all levels, but particularly between our institutions. There was a consensus that greater efforts need to be made to integrate the financial, economic, social and political policies and strategies.

9. The reason for the Economic and Social Council's originally being conceived by the fathers of the United Nations, the vision and motivation driving recent efforts to renew the economic and social sectors, and the inspiration behind today's meeting have all been focused on a single goal: to make this world a better place to live in for all the people of the planet by giving the developing countries, especially the least developed countries, a better chance to improve their well-being. We must continue to pool all our efforts to eradicate poverty and pave the way towards a future of sustainable development. Development must remain the top priority of the United Nations.

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Market access: developments since the Uruguay Round, implications, opportunities and challenges, in particular for the developing countries and the least developed among them, in the context of globalization and liberalization

President's summary of the high-level segment of the Economic and Social Council

(6–8 July 1998)

1. The high-level segment of the substantive session of 1998 of the Economic and Social Council took place from 6 to 8 July 1998. Following opening statements by the President of the Council and by the Secretary-General of the United Nations, the Council held a high-level policy dialogue with the Managing Director of the International Monetary Fund (IMF), the President of the World Bank, the Secretary-General of the United Nations Conference on Trade and Development (UNCTAD) and the Deputy Director-General of the World Trade Organization on developments in the world economy. Upon conclusion of the high-level policy dialogue with the heads of the international financial institutions and the trade organizations, the Council conducted a high-level debate on the theme of "Market access: developments since the Uruguay Round, implications, opportunities and challenges, in particular for the developing countries and the least developed among them, in the context of globalization and liberalization", at the closing of which the Council, for the first time in its history, adopted a ministerial communiqué.

2. A panel discussion moderated by the Deputy-Secretary-General was held on 7 July; the panellists were Mr. F. Bergsten, Director, Institute for International Economics; J. Bhagwati, Professor, Columbia University; and Ms. M. Livanos Cattaui, Secretary-General, International Chamber of Commerce. The subject of the panel was "Market access: perspective beyond the Uruguay Round".

I. Opening statements

3. The President of the Council in his opening statement referred to the current economic crisis in Asia which had made it clear that integration into the global market could bring great benefits, but carried serious risks if not managed well. No country was able to remain insulated from the consequences of events occurring elsewhere. It was of paramount importance to develop a global rapid response capacity in which Governments and international institutions together with the private sector, trade unions and civil society organizations could cooperate to effectively forestall crises and address them expeditiously when they occurred. The current strains in the international financial and trading system served to highlight the need to orient the forces of

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globalization towards greater balance among the imperatives of economic growth, social equity, workers' rights, gender equality and environmental protection. This posed a global challenge to all international institutions and tested the effectiveness of the multilateral system as a whole.

4. He stressed that by now it was abundantly clear no single international organization or country, acting individually, with its own set of policy measures and its own interpretation of events, had any meaningful chance to help steer the world towards greater economic and social stability. It was necessary to progressively develop an integrated policy outlook reflecting common objectives of the international community. It was not possible to pursue independent sectoral policies to deal with integrated, multifaceted and systemic problems. This and future policy dialogues, the President observed, provided an opportunity for the Council to help develop a shared understanding of issues and devise a broad policy orientation to address them.

5. The Secretary-General in his statement noted that global conditions today offered unprecedented prospects for peace and security. Yet, the international community seemed ill-equipped to fully harness that tremendous potential. Tremendous wealth existed alongside chronic destitution. People around the world were torn between the hopes engendered by decades of remarkable progress and the fear of future upheavals. Those hopes and fears were global, as were the economy and markets. However, politics were local and there was a widening gap between what citizens demanded and what Governments could deliver. While there was every reason to treasure and nurture the achievements brought about by the international trading system, the Asian crisis was a reminder of how factors such as finance, economics and socio-political forces were working in tandem to shape, and, at times, shake up the world.

6. The Secretary-General stated that for the United Nations three broad observations were paramount. First, the crisis had had its most devastating effect on the marginalization of society. It threatened to undo years of progress in alleviating poverty and advancing the rights of women. Second, developing countries were less able than their developed counterparts to withstand the fallout of the crisis. Third, interdependence among nations had an essential complement – interdependence among issues. Finance, trade, governance and social equity were intimately linked.

7. The open, inclusive, global economy was the most promising means of widely spreading the benefits of globalization, the Secretary-General stressed. At the same time, the fear of globalization had to be taken seriously. The challenge for Governments was to show that global imperatives could coexist with local needs. Choices had to be made between the confinement to purely local points of view and the adoption of a more global perspective. One key question was whether the international community would choose to use the institutions at its disposal. There was really no choice, as it would be grievous for the international community to retreat from multilateralism.

II. Policy dialogue

8. The Managing Director of IMF stated that the international community must support the adjustment programmes of the countries most severely affected by the Asian crisis. It was also vital that countries with balance-of-payment surpluses recycle those surpluses in the form of untied loans and humanitarian aid to countries in the process of adjustment. As creditors, they should stand ready to grant generous terms for the restructuring of their claims and support economic recovery in Asia through new loans. Above all, those countries should keep their markets open. Countries that pursued strong, progressive trade liberalization, in the context of general economic reforms and market-oriented policies, would achieve growth and increased trade performance. For their part, industrialized countries should liberalize import restrictions. However, they should avoid replacing tariffs and non-tariff barriers with administered protection measures, such as anti-dumping restrictions.

9. Working with the World Bank, IMF was exploring ways to accelerate public enterprise and financial sector reforms, to improve the assessment of medium-term investments needs and the capacity to absorb external financing, and to identify potential adverse social consequences of reforms. In order to make the world less prone to financial crises, the Fund's surveillance had to become more effective and the transparency of international finance had to be enhanced. IMF could play a central role in crisis prevention by encouraging members to strengthen their macroeconomic policies and financial sectors.

10. The President of the World Bank stated that the Bank had sought to assist the countries hardest-hit by the Asian financial crisis. The crisis was not localized and issues in South-East Asia had affected all countries in different ways. The World Bank had also focused on the structural and social aspect of the crisis, with particular attention to poverty-related matters. Attempts had been made to deal with the segments of the economy most affected, including rural areas, so as to ensure provision of basic social

programming that offered people a sense of hope. There could be no peace and stability without social stability and hope. Efforts were under way in the financial, judicial and regulatory systems to provide a framework essential for the success of the work of IMF. Before gaining access to markets, countries must establish a fundamental economic base, including infrastructure and a capacity to attract foreign investment. Helping countries to build such a framework was one of the essential functions of the World Bank. Also, transparency between borrower and lender countries was necessary in order to avoid the distortions that came from corruption, crime and the divergence of funds.

11. The Secretary-General of UNCTAD stressed that the Asian crisis had hit the poor particularly hard, in terms of sharp falls in commodities and in the export prices of some goods. The recent financial crises had occurred because the Governments concerned, among others, had failed to manage their countries' integration into the capital markets. Well-calibrated national policies could help manage financial crises, limit their potential for lasting damage and re-establish economic growth. Yet, when an economic crisis became a systemic problem, action was also needed at the global level. The Asian crisis was only the latest in a string of financial crises that had disrupted the global economy since the breakdown of the Bretton Woods system. The international community still needed to learn how to manage such economic turmoil. It would be useful to conduct an honest re-evaluation of the international policy response to assess its achievements and failures. He also noted that it was much more difficult to manage integration into international capital markets than it was to achieve successful insertion into the international trading system. Developing countries should not be pushed or pressured into premature financial liberalization, as this would deny them the option of protecting their economies from international financial instability and volatile speculative capital flows.

12. The Deputy Director-General of the World Trade Organization, stated that the fiftieth anniversary of the multilateral trading system six weeks before had demonstrated the virtual consensus throughout every region on the validity of open trade and economic integration under the rule of law. More and more, the ground rules provided by the World Trade Organization reached across, into and around other issues and concerns – ranging from investment and competition policy, to environmental, development, health and social policies. The various challenges needed to be faced as constituting pieces of a larger policy that demanded broader and more integrated solutions. Developing countries were increasingly represented in the world's trading system. This reflected the emergence of many of these countries as important trading powers in their own right. Perhaps most significant of all was the establishment of improved binding mechanisms for settling trade disputes. Even the smallest country could now look to the World Trade Organization in defence of its interests on the basis of shared and enforceable rules. Still, a variety of non-tariff measures continued to restrict exports from developing countries, and the fact that national and international product standards were difficult to meet led to reduced exports opportunities for least developed countries. Also, in the field of trade in services, much scope remained for further liberalization.

13. In the ensuing exchange of the Council with the Managing Director of IMF, the President of the World Bank and the Secretary-General of UNCTAD, considerable attention was paid to the Asian crisis. It was noted, in this regard that, while inadequacies in domestic financial and monetary policies had played a major part in leading to the problems that countries faced in Asia and elsewhere, those problems would not have reached such proportions if lending institutions operating in the international markets had not taken excessive risks. Concern was also expressed about the recent weakness of the yen which posed a crisis within the crisis. This weakness could seriously jeopardize the ongoing recovery in some countries.

14. With respect to preventing future crises, it was observed that the severity and the speed of the Asian crisis had highlighted the need for rapid global response capacity to prevent and deal with future crises. This would require the strengthening and adaptation of multilateral institutions and greater coherence in policy-making. An honest re-evaluation of the international policy response – without any preconceptions or prejudice – was also needed. Furthermore, constant vigilance by all countries over all socio-economic parameters had to be maintained. In particular, soundness of the banking system, avoidance of the unsustainable accumulation of short-term financing, and the transparent and accountable character of governance were seen as essential. Also, transparency in international lending and borrowing were crucially important in order to deal with excessive short-term and speculative capital flows and problems of corruption and debt management in the economy. More effective procedures for involving the private sector in preventing and resolving the debt crisis also needed to be established. In addition, in order to reap the benefits of globalization while minimizing its risks, developing countries should continue to liberalize trade and capital controls, paying due attention to sequencing and the soundness of the financial and balance-of-payments situation. At the same time, developing countries should not

be pushed into premature financial liberalization. The fruitful dialogue on these issues at the special high-level meeting of the Economic and Social Council with the Bretton Woods institutions, held on 18 April 1998, was widely noted and a call was made to hold similar meetings in the future.

15. With regard to trade liberalization and market access, it was noted that they should also be seen in the context of poverty eradication, the ultimate goal of development efforts. In this context, ensuring the provision of basic services, creating adequate infrastructure and investing in human development were all necessary prerequisites of a developing country's benefiting from any enhancement of global market access for its goods. It was also noted that numerous tariff – and non-tariff – barriers remained, as well as tariff peaks and escalation, which affected developing countries' exports. Liberalization should continue in these and other trade areas. Furthermore, the international trading system could not be viewed in isolation from other developmental concerns, nor from other related issues. Therefore, the future multilateral trade agenda should aim at broad-based liberalization of trade.

16. Concerning coherence of the United Nations system, it was stressed that cooperation and coordination within the United Nations system, between the United Nations and the international financial institutions, and between the United Nations and the World Trade Organization were crucial for preparing future trade negotiations and addressing other major challenges. At the same, it was noted that within the United Nations system, a substantial increase of dialogue and working together had already been achieved; the challenge was to build upon the progress made to achieve greater complementarity and coherence in the management of the global economy.

III. High-level debate

17. It was generally agreed that liberalized world trade was essential in promoting growth and development and in eradicating poverty.

18. Full commitment to the multilateral trading system was expressed. The Uruguay Round of multilateral trade negotiations had resulted in a more open, rule-based and predictable multilateral trading system and significant improvement in market access conditions. Full and faithful implementation of the Uruguay Round commitments, which was considered essential for the credibility of the multilateral trading system, was called for.

19. Regret was expressed about the lack of progress in implementing the provisions on special and differential treatment for developing countries, and a strengthened commitment and concrete action to implement these provisions were urged. In this regard, it was recalled that trading partners must guarantee developing countries full market access, and industrialized countries should consider granting unilateral duty-free treatment to developing countries on a preferential basis. However, a number of developed countries did consider the integration of developing countries into the world trading system one of the primary objectives of their development policies, and therefore granted all developing countries, for almost all the exports of those countries, preferential access to their markets.

20. It was pointed out that significant tariffs and other non-tariff barriers to market access remained important impediments in many sectors, a considerable number of which were of particular interest to developing countries and least developed countries. The view was expressed that the implementation of the Uruguay Round was incomplete in many key areas of particular interest to the developing countries. It was noted that there was little commercially meaningful integration of textiles and clothing into the multilateral trading system so far, and that subsidizing agriculture in developed countries impeded developing countries' agricultural exports as well as their efforts to attain food security. On the other hand, it was recalled that the unprecedentedly large number of developing countries that actively participated in the multilateral trade liberalization had derived large benefits from it, including in terms of improved access to the markets of developed countries.

21. The developing of a comprehensive agenda for further trade liberalization that reflected the interests of all members of the World Trade Organization was called for. It was noted that the launching of a millennium round of trade negotiations was crucial for meeting the challenges of a globalized economy and it was argued that negotiations to further liberalize agriculture and services should be placed in a broader negotiating framework that would allow for a balanced treatment of the interests of all members. Support was expressed for a multilateral framework of rules on investment and competition in the services sector and for mainstreaming sustainable development into the multilateral trade liberalization agenda.

22. Reference was made to the agreement at the second Ministerial Conference of the World Trade Organization to establish a work programme in preparation for the next World Trade Organization ministerial meeting. The

developing of a comprehensive agenda for further liberalization, which would reflect the interest of all members and would be able to deliver results in a short time, was called for. Also, all partners were invited to be proactive in setting out their priorities for a multilateral round of trade negotiations.

23. Measures taken by members of the World Trade Organization that were in contravention of the spirit of the multilateral trade agreements, such as contingency measures (for example, transitional safeguard measures, unilateral rules of origin and back-loading in the implementation of the agreement on textile and clothing), were deplored. Developed importing countries were called upon to faithfully work towards integrating fully the textile and clothing sector into the system. The abuse of anti-dumping measures and the use of discriminatory trade actions were among the actions to be rejected. Some delegations stressed that the taking of unilateral measures as well as the enactment of national laws with extraterritorial effects should be totally excluded as an option of trade policy in regard to the multilateral trading system.

24. The mandatory reviews of various agreements, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, the Agreement on Trade-Related Investment Measures and, especially, the Understanding on Rules and Procedures Governing Settlement of Disputes,[1] were seen as being of considerable importance as well. In this regard, it was pointed out that the Disputes Settlement Understanding should, *inter alia*, include greater technical and legal support to developing countries in order to make the World Trade Organization judicial enforcement mechanism more accessible to those countries.

25. The lack of technical abilities of the developing countries was seen as a major constraint on their efforts to take fuller advantage of the multilateral trade agreements. The importance of the provision of the necessary technical assistance to developing countries was underlined. Many delegations referred to their ongoing support to developing countries in this regard, as well as to the preferential market access granted by them to these countries.

26. However, it was noted that securing market access did not by itself guarantee actual export revenues. Competitiveness was based not only on quality and price of products but also on such interrelated factors as good production practices and export financing. Furthermore, comparative advantages were seen as being time-bound and did not guarantee success in the long run.

27. One delegation pointed out that, while promoting and increasing exports were universally accepted as a means to create wealth, the importance of imports was not often accorded similar treatment. His country, which provided liberal market access, was providing jobs at home and around the globe.

28. Sound macroeconomic policies and a legal and economic framework that enhanced the growth of a dynamic private sector were seen as essential in improving countries' capacity to trade. Equally important were an enabling environment for investment, good governance, sound competition policy, fostering of human resources in the areas of trade, trade support services, strengthened public institutions focusing on trade, and trade-related infrastructural development.

29. The view was expressed that a multilateral framework of rules on investment and competition in the service sector should, in particular, provide a stimulant to foreign direct investment. The importance of examining trade issues related to electronic commerce was also emphasized.

30. Integration of the least developed countries in the global trading system was a priority for all. A number of measures to improve their market access conditions and supply capacity were suggested, such as full and effective implementation of the Plan of Action for the least developed countries adopted at the first Ministerial Conference of the World Trade Organization, as well as the Integrated Framework for Trade-Related Technical Assistance, Including for Human and Institutional Capacity-building, to Support Least Developed Countries in Their Trade and Trade-related Activities,[2] adopted at the High-level Meeting on Integrated Initiatives for Least Developed Countries' Trade Development held in October 1997; provision of duty-free access to all products and removal of all quantitative import restrictions for least developed countries; elimination of tariff escalation; and elimination of time-based elements in the special and preferential treatment granted to least developed countries in multilateral trade agreements.

31. Recent preferential actions in favour of least developed countries, including through improvements in generalized system of preference (GSP) schemes, were recounted. It was pointed out that least developed countries themselves needed to continue efforts towards creating a sound macroeconomic framework, including transparent and accountable governance, investment in basic social services and openness to trade and investment.

32. Commitments to assist least developed countries and African countries were reiterated and bilateral initiatives in favour of these countries were brought to the attention of the

Council, and the international community was called upon to continue its effort to enhance market access for products of export interest to Africa and to support Africa's efforts towards diversification and building supply capacity. South-South cooperation in trade and other areas should also be supported.

33. The importance of official development assistance (ODA) was also noted. It was pointed out that ODA ensures external financial flows to countries that have difficulties in mobilizing domestic resources and in attracting foreign direct investment. ODA-financed development in sectors not reached by private flows, and the 0.7 per cent target have lost none of their importance.

34. It was underscored that trade policy had an important role to play in restoring stability and growth in countries affected by the crisis in Asia. Rejection of protectionist measures and a clear commitment to pursue further comprehensive trade and investment liberalization were essential in this respect. The crisis had shown the importance of promoting greater coherence between trade and macroeconomic, social and other policies. In this respect, the United Nations could play an important role in promoting greater awareness of these interactions and developing international norms. Enhanced cooperation between the World Trade Organization and the Bretton Woods institutions was crucial, as was greater cooperation between the United Nations and the World Trade Organization. The World Trade Organization was called upon to reflect on how to better effect a coherence between its activities and the broader needs and concerns of the global economy.

35. The need for promoting the principle of universality in the multilateral trading system, within the framework of the World Trade Organization, was emphasized. Early completion of the accession process was also called for. Many of the countries negotiating entry into the World Trade Organization expected the next round of negotiations to be open for participation of interested countries irrespective of their application for entry into the World Trade Organization. In this regard, it was noted that countries acceding to the World Trade Organization should not be asked for commitments higher than those made by countries that had joined the organization earlier. Early completion of the pending processes for accession was called for.

36. At the same time, it was stressed that regional trading arrangements could make an important contribution to a solid and universal multilateral trading system. Such arrangements could help developing countries achieve integration into the world trading system as they had helped them develop and diversify their market bases. However, these arrangements should be fully consistent with the rules and principles of the international trading system and should maintain the basic tenet of open regionalism. The experience gained through such arrangements could benefit the multilateral trading system.

37. Arguments in favour of making environment and trade policies mutually supportive were also put forward. Reference was made to a recent proposal that the World Trade Organization should convene a high-level meeting on trade and the environment to help overcome the current impasse in discussion and promote the concept of sustainable development in the World Trade Organization agenda.

38. The adoption by the International Labour Organization (ILO) of a Declaration on Fundamental Principles and Rights at Work was welcomed and proposals for a practical follow-up mechanism within ILO were eagerly awaited. To pursue enhanced social and environmental protection through positive incentives, a number of developed countries had recently started providing, through their GSP scheme, additional preferences to those developing countries that had adopted and implemented internationally agreed environmental and social norms.

39. It was also noted that trade conditionalities to enforce non-trading objectives, including those related to labour standards and the environment, could undermine the proper functioning of the multilateral trading system.

40. One delegation referred to the economic blockade of its country by a developed country, which ignored the successive resolutions of the General Assembly condemning that blockade, and called for its total and unconditional elimination.

41. A few other delegations noted the importance of emphasizing the danger of an excessive recourse to the imposing of economic sanctions on developing countries. Two delegations condemned the automatic renewal by the Security Council of economic sanctions against their countries despite the General Assembly's calls to put an end to the punitive and unilateral economic measures. It was pointed out by one delegation that the Assembly had not adopted those resolutions by consensus.

42. One delegation raised the issue of the banana trade and expressed discontent with the World Trade Organization ruling that preferential treatment of African, Caribbean and Pacific (ACP) countries contravened the World Trade Organization's principles. The delegate warned that the implementation of the ruling would bring about a reduction in the living standards of the people of the Caribbean Community (CARICOM) and an acceleration of poverty. A

fundamental reform of the dispute settlement was needed. In a right of reply, one delegation stated that trade dispute settlements based on rules would always lead to situations in which countries won some rulings but lost others.

43. Finally, a view was expressed that the United Nations system as a whole, particularly UNCTAD, should continue to play an active role in helping developing countries through, *inter alia*:

(a) Ensuring a continuum in its work programme between research activities and its capacity-building and technical cooperation functions;

(b) Providing objective and in-depth analyses of the effects of liberalization and of any proposals for further liberalization;

(c) Strengthening the capacity of developing countries to participate in trade negotiations;

(d) Continuing to devote a large part of its work to building and enhancing capacity to trade in developing countries, in particular the least developed countries and those in Africa, and substantially increasing its trade-related technical cooperation;

(e) Strengthening its information and training services, and strengthening technical cooperation to expand export supply capabilities of developing countries;

(f) Promoting better coherence among global development, financial and trade policies so that the ability of the developing countries to benefit from increasing trade was not compromised by imperfections in financial markets;

(g) Ensuring that the structural factors such as debt, inadequate concessional development finance and restrictions on the transfer of technology did not impede the developing countries in respect of their availing themselves of the opportunities presented by the multilateral trading system.

44. In conclusion, many delegations commended UNCTAD and the World Trade Organization for their excellent joint documentation in preparation for the high-level segment and for their support towards its successful outcome.

Notes

[1] See *Legal Instruments Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh on 15 April 1994* (GATT secretariat publication, Sales No. GATT/1994-7).

[2] World Trade Organization document WT/LDC/HL/1/Rev.1.

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SOCIAL AND HUMAN RIGHTS QUESTIONS: UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Letter dated 27 July 1998 from the Permanent Representative of Viet Nam to the United Nations addressed to the President of the Economic and Social Council

I have the honour to draw your attention to the report of the United Nations High Commissioner for Refugees as contained in document E/1998/7, which is to be considered under agenda item 14 (e) at the substantive session of 1998 of the Economic and Social Council.

What is of concern to the Vietnamese delegation is paragraph 123 of the above-mentioned report, which describes Viet Nam as "country of origin" for a certain group of people who presently reside in China and mentions "the possibility of voluntary repatriation for those who would wish to return to Viet Nam".

In this connection, I wish to reaffirm the position of the Vietnamese Government, which has been clearly explained at the annual meetings of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, most recently at its 1997 annual meeting, as follows:

> In the late 1970s, a group of Chinese citizens residing in Viet Nam did return to China. They did so in a special circumstance and at the appeal of the Chinese Government. For the past two decades, the life of these people has stabilized in China, their own country, where they should remain. The international community should continue to extend to them necessary assistance. Parties concerned should adopt a forward-looking approach.

The Vietnamese delegation wishes to see the view of the Vietnamese Government as mentioned above duly reflected in the records of the Economic and Social Council at its substantive session of 1998.

I would like to request you to have this letter circulated as an official document of the substantive session of 1998 of the Economic and Social Council under agenda item 14 (e).

(Signed) NGO QUANG XUAN
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

United Nations E/1998/94

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Social and human rights questions: human rights

Privileges and immunities of the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers

Note by the Secretary-General

1. In its resolution 22 A (I) of 13 February 1946, the General Assembly adopted, pursuant to Article 105 (3) of the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations (the Convention). Since then, 137 Member States have become parties to the Convention, and its provisions have been incorporated by reference into many hundreds of agreements relating to the headquarters or seats of the United Nations and its organs, and to activities carried out by the Organization in nearly every country of the world.

2. That Convention is, *inter alia*, designed to protect various categories of persons, including "Experts on Mission for the United Nations", from all types of interference by national authorities. In particular, Section 22 (b) of Article VI of the Convention provides:

> *Section 22*: "Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including time spent on journeys in connection with their missions. In particular they shall be accorded:
>
> "...
>
> "(b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of any kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations."

3. In its Advisory Opinion of 14 December 1989, on the "Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations" (the so-called "Mazilou case"), the International Court of Justice held that a Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights was an "expert on mission" within the meaning of Article VI of the Convention.

4. The Commission on Human Rights, by its resolution 1994/41 of 4 March 1994, endorsed by the Economic and Social Council in its decision 1994/251 of 22 July 1994, appointed Dato' Param Cumaraswamy, a Malaysian jurist, as the Commission's Special Rapporteur on the Independence of Judges and Lawyers. His mandate consists of tasks including, *inter alia*, to inquire into substantial allegations concerning, and to identify and record attacks on,

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the independence of the judiciary, lawyers and court officials. Mr. Cumaraswamy has submitted four reports to the Commission on the execution of his mandate: E/CN.4/1995/39, E/CN.4/1996/37, E/CN.4/1997/32 and E/CN.4/1998/39. After the third report containing a section on the litigation pending against him in the Malaysian civil courts, the Commission at its fifty-fourth session, in April 1997, renewed his mandate for an additional three years.

5. In November 1995 the Special Rapporteur gave an interview to *International Commercial Litigation*, a magazine published in the United Kingdom of Great Britain and Northern Ireland but circulated also in Malaysia, in which he commented on certain litigations that had been carried out in Malaysian courts. As a result of an article published on the basis of that interview, two commercial companies in Malaysia asserted that the said article contained defamatory words that had "brought them into public scandal, odium and contempt". Each company filed a suit against him for damages amounting to M$ 30 million (approximately US$ 12 million each), "including exemplary damages for slander".

6. Acting on behalf of the Secretary-General, the Legal Counsel considered the circumstances of the interview and of the controverted passages of the article and determined that Dato' Param Cumaraswamy was interviewed in his official capacity as Special Rapporteur on the Independence of Judges and Lawyers, that the article clearly referred to his United Nations capacity and to the Special Rapporteur's United Nations global mandate to investigate allegations concerning the independence of the judiciary, and that the quoted passages related to such allegations. On 15 January 1997, the Legal Counsel, in a note verbale addressed to the Permanent Representative of Malaysia to the United Nations, therefore "requested the competent Malaysian authorities to promptly advise the Malaysian courts of the Special Rapporteur's immunity from legal process" with respect to that particular complaint. On 20 January 1997, the Special Rapporteur filed an application in the High Court of Kuala Lumpur (the trial court in which the said suit had been filed) to set aside and/or strike out the Plaintiffs' writ, on the ground that the words that were the subject of the suits had been spoken by him in the course of performing his mission for the United Nations as Special Rapporteur on the Independence of Judges and Lawyers. The Secretary-General issued a note on 7 March 1997 confirming that "the words which constitute the basis of plaintiffs' complaint in this case were spoken by the Special Rapporteur in the course of his mission" and that the Secretary-General "therefore maintains that Dato' Param Cumaraswamy is immune from legal process with respect thereto". The Special Rapporteur filed this note in support of his above-mentioned application.

7. After a draft of a certificate that the Minister for Foreign Affairs proposed to file with the trial court had been discussed with representatives of the Office of Legal Affairs, who had indicated that the draft set out the immunities of the Special Rapporteur incompletely and inadequately, the Minister nevertheless on 12 March 1997 filed the certificate in the form originally proposed; in particular the final sentence of that certificate in effect invited the trial court to determine at its own discretion whether the immunity applied, by stating that this was the case "*only* in respect of words spoken or written and acts done by him in the course of the performance of his mission" (emphasis added). In spite of the representations that had been made by the Office of Legal Affairs, the certificate failed to refer in any way to the note that the Secretary-General had issued a few days earlier and that had in the meantime been filed with the court, nor did it indicate that in this respect, i.e. in deciding whether particular words or acts of an expert fell within the scope of his mission, the determination could exclusively be made by the Secretary-General, and that such determination had conclusive effect and therefore had to be accepted as such by the court. In spite of repeated requests by the Legal Counsel, the Minister for Foreign Affairs refused to amend his certificate or to supplement it in the manner urged by the United Nations.

8. On 28 June 1997, the competent judge of the Malaysian High Court for Kuala Lumpur concluded that she was "unable to hold that the Defendant is absolutely protected by the immunity he claims", in part because she considered that the Secretary-General's note was merely "an opinion" with scant probative value and no binding force upon the court and that the Minister for Foreign Affairs' certificate "would appear to be no more than a bland statement as to a state of fact pertaining to the Defendant's status and mandate as a Special Rapporteur and appears to have room for interpretation". The Court ordered that the Special Rapporteur's motion be dismissed with costs, that costs be taxed and paid forthwith by him and that he file and serve his defence within 14 days. On 8 July, the Court of Appeal dismissed Mr. Cumaraswamy's motion for a stay of execution.

9. On 30 June and 7 July 1997, the Legal Counsel thereupon sent notes verbales to the Permanent Representative of Malaysia, and also held meetings with him and his Deputy. In the latter note, the Legal Counsel, *inter alia*, called on the Malaysian Government to intervene in the current proceedings so that the burden of any further defence, including any expenses and taxed costs resulting

therefrom, be assumed by the Government; to hold Mr. Cumaraswamy harmless in respect of the expenses he had already incurred or that were being taxed to him in respect of the proceedings so far; and, so as to prevent the accumulation of additional expenses and costs and the further need to submit a defence until the matter of his immunity was definitively resolved between the United Nations and the Government, to support a motion to have the High Court proceedings stayed until such resolution. The Legal Counsel referred to the provisions for the settlement of differences arising out of the interpretation and application of the 1946 Convention that might arise between the Organization and a Member State, which are set out in Section 30 of the Convention, and indicated that if the Government decided that it cannot or does not wish to protect and to hold harmless the Special Rapporteur in the indicated manner, a difference within the meaning of those provisions might be considered to have arisen between the Organization and the Government of Malaysia.

10. Section 30 of the Convention provides as follows:

> *Section 30*: "All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

11. On 10 July yet another lawsuit was filed against the Special Rapporteur by one the lawyers mentioned in the magazine article referred to in paragraph 5 above, based on precisely the same passages of the interview and claiming damages in an amount of M$ 60 million (US$ 24 million). On 11 July, the Secretary-General issued a note corresponding to the one of 7 March 1997 (see para. 6 above) and also communicated a note verbale with essentially the same text to the Permanent Representative of Malaysia with the request that it be presented formally to the competent Malaysian court by the Government.

12. On 23 October and 21 November 1997, new plaintiffs filed a third and fourth lawsuit against the Special Rapporteur for M$ 100 million (US$ 40 million) and M$ 60 million (US$ 24 million) respectively. On 27 October and 22 November 1997, the Secretary-General issued identical certificates of the Special Rapporteur's immunity.

13. On 7 November 1997, the Secretary-General advised the Prime Minister of Malaysia that a difference might have arisen between the United Nations and the Government of Malaysia and about the possibility of resorting to the International Court of Justice pursuant to Section 30 of the Convention. Nonetheless on 19 February 1998, the Federal Court of Malaysia denied Mr. Cumaraswamy's application for leave to appeal stating that he is neither a sovereign nor a full-fledged diplomat but merely "an unpaid, part-time provider of information".

14. The Secretary-General then appointed a Special Envoy, Maître Yves Fortier of Canada, who, on 26 and 27 February 1998, undertook an official visit to Kuala Lumpur to reach an agreement with the Government of Malaysia on a joint submission to the International Court of Justice. Following that visit, on 13 March 1998 the Minister for Foreign Affairs of Malaysia informed the Secretary-General's Special Envoy of his Government's desire to reach an out-of-court settlement. In an effort to reach such a settlement, the Office of Legal Affairs proposed the terms of such a settlement on 23 March 1998 and a draft settlement agreement on 26 May 1998. Although the Government of Malaysia succeeded in staying proceedings in the four lawsuits until September 1998, no final settlement agreement was concluded. During this period, the Government of Malaysia insisted that, in order to negotiate a settlement, Maître Fortier must return to Kuala Lumpur. While Maître Fortier preferred to undertake the trip only once a preliminary agreement between the Parties had been reached, nonetheless, based on the Prime Minister of Malaysia's request that Maître Fortier return as soon as possible, the Secretary-General requested his Special Envoy to do so.

15. Maître Fortier undertook a second official visit to Kuala Lumpur, from 25 to 28 July 1998, during which he concluded that the Government of Malaysia was not going to participate either in settling this matter or in preparing a joint submission to the current session of the Economic and Social Council. The Secretary-General's Special Envoy therefore advised that the matter should be referred to the Council to request an advisory opinion from the International Court of Justice. The United Nations had exhausted all efforts to reach either a negotiated settlement or a joint submission through the Council to the International Court of Justice. In this connection, the Government of Malaysia has acknowledged the Organization's right to refer the matter to the Council to request an advisory opinion in accordance with Section 30 of the Convention, advised the Secretary-General's Special Envoy that the United Nations should proceed to do so, and indicated that, while it will make its own presentations to the International Court of

Justice, it does not oppose the submission of the matter to that Court through the Council.

16. The Secretary-General considers it most important that the principle be accepted that it is for himself alone to determine, with conclusive effect (except as indicated in para. 17 below), whether a member of the staff of the Organization or an expert on mission has spoken or written words or performed an act "in their official capacity" (in the case of officials) or "in the performance of their mission" (in the case of experts on mission). Unless such conclusive effect is accorded to his determinations in this respect, it will be for national courts to determine – and in respect of a given word or act there may be several national courts – whether an official or an expert, or a former official or expert, enjoys immunity in respect of his words or acts. The adjudication of United Nations privileges and immunities in the national courts would be certain to have a negative effect on the independence of officials and experts, who would then have to fear that at any time, whether they were still in office or after they had left it, they could be called to account in national courts, not necessarily their own, civilly or criminally, for their words spoken or written or acts performed as officials or experts.

17. Although the decision of the Secretary-General must thus be considered as not subject to challenge in national courts, it can, of course, be challenged by a Government concerned pursuant to Section 30 of the 1946 Convention (quoted in para. 10 above), in which case the matter would be decided with binding effect by the International Court of Justice.

18. It should be pointed out that Section 23 of the 1946 Convention provides in respect of experts (and similarly Section 20 in respect of officials) that:

> *Section 23*: "Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations."

Thus any abuse of the immunities of an expert (or an official) would be prevented by the right and duty of the Secretary-General to waive such immunity under the circumstances specified in those sections.

19. In connection with this case, it should also be noted that the Secretary-General received a communication from the Special Rapporteurs/Representatives/Experts and Chairpersons of Working Groups of the Commission on Human Rights and the Advisory Services Programme of the United Nations Commission on Human Rights which indicated that "undermining the immunity accorded to one expert constitutes an attack on the entire system and institution of United Nations human rights special procedures and mechanisms". Moreover, on 29 May 1998, the Fifth Meeting of Special Rapporteurs/Representatives/Experts and Chairpersons of Working Groups of the Commission on Human Rights and of the Advisory Services Programmes adopted a statement entitled the "Judicial Harassment of a Special Rapporteur" urging the Secretary-General to refer the matter to the International Court of Justice pursuant to Section 30 of the Convention. The Secretary-General received innumerable interventions from representatives of the international human rights and legal community reflecting the overwhelming consensus in favour of referring the matter to the International Court of Justice.

20. Finally, it is necessary to point out that unless the Government of Malaysia accepts the responsibility, costs and expenses of ensuring respect for the Special Rapporteur's immunity through appropriate interventions in the Malaysian courts, then these considerable expenses might have to be assumed by the Organization itself as it considers that the words that constitute the basis of the plaintiffs' complaint were spoken by the Rapporteur in the course of his mission.

21. As the Organization and the Government of Malaysia agree that a difference has arisen between them out of the interpretation or application of the Convention and as they have been unable to agree on another mode of settlement, the difference should be referred to the International Court of Justice in accordance with Section 30 of the Convention and the following request for an advisory opinion should be made in accordance with Article 96 of the Charter of the United Nations and Article 65 of the Statute of the Court:

> "Considering the difference that has arisen between the United Nations and the Government of Malaysia with respect to the immunity from legal process of Mr. Dato' Param Cumaraswamy, the United Nations Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers, in respect of certain words spoken by him:
>
> "1. Subject only to Section 30 of the Convention on the Privileges and Immunities of the United Nations, does the Secretary-General of the United Nations have the exclusive authority to determine whether words were spoken in the course of the performance of a mission for the

United Nations within the meaning of Section 22 (b) of the Convention?

"2. In accordance with Section 34 of the Convention, once the Secretary-General has determined that such words were spoken in the course of the performance of a mission and has decided to maintain, or not to waive, the immunity from legal process, does the Government of a Member State party to the Convention have an obligation to give effect to that immunity in its national courts and, if failing to do so, to assume responsibility for, and any costs, expenses and damages arising from, any legal proceedings brought in respect of such words?

"Pending receipt of the advisory opinion of the International Court of Justice, which shall be accepted as decisive by the parties, the Government of Malaysia is called upon to ensure that all judgements and proceedings in this matter in the Malaysian courts are stayed."